



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

AUDITS

ORDER

IN THE MATTER OF THE DEFERRED BALANCES)	DOCKET NOS.
AUDIT OF JERSEY CENTRAL POWER & LIGHT)	EX02060363
COMPANY PHASE II: AUGUST 2002-JULY 2003)	EA02060365

(SERVICE LIST ATTACHED)

BY THE BOARD:

The Division of the Ratepayer Advocate ("RPA") by letter motion of December 7, 2005 has sought a full evidentiary hearing of the Jersey Central Power & Light Company's ("JCP&L" or "Company") Phase II Deferred Balances Audit, along with the merger of said audit matter with the Company's most recent Non-Utility Generation Charge Clause ("NGC") filing. The RPA made an additional motion by letter dated March 7, 2006 asking the Board of Public Utilities to compel the Company to fully respond, in a timely manner, to the RPA's previously propounded discovery requests. At its May 16, 2006 Agenda Meeting, the Board approved an order authorizing, nunc pro tunc, the actions and schedule set forth in a May 10, 2006 letter to the RPA by Executive Director Victor Fortkiewicz.

Procedural History:

On July 29, 2002, the Board issued a Request for Proposal ("RFP") to secure the services of an independent auditor to conduct audits of New Jersey's four electric utilities ("Utilities") restructuring-related deferred balances. On October 2, 2002, Mitchell & Titus, LLP and its subcontractor Barrington-Wellesley Group, Inc. were engaged to perform the audit for Jersey Central Power & Light Company ("JCP&L" or "Utility"). The audit scope covered the period of August 1, 1999 through July 31, 2003 (the "Transition Period") and the impact of transactions therein on the deferred balances of JCP&L. The Phase I Audit examined deferred balances from August 1, 1999 to July 31, 2002. The Phase II Audit examined deferred balances from August 1, 2002 to July 31, 2003.

The objective of the Audit was to provide the Board with a certified audit opinion as to whether the Utility's deferred balances, as of July 31, 2003, were accurately calculated, correctly recorded, fairly stated in all material respects, and in compliance with Board Orders. The Audit also included a prudence review of the Utility's Basic Generation Service ("BGS") procurement

practices for the first three years of the Transition Period, for a utility that had divested its generation assets. The Audit also examined the Utility's mitigation efforts, consistent with applicable laws, with respect to the above-market Non-Utility Generation ("NUG") contract costs during the transition period.

Additionally, for the Phase I proceeding, the Board authorized full evidentiary hearings to address all accounting and prudence related issues. The RPA participated fully in the Phase I hearings. The Board did not contemplate or authorize evidentiary hearings for Phase II.

At its December 2, 2005 agenda meeting, the Board acknowledged receipt of the Phase II Deferred Balance Audit Report for JCP&L ("Audit Report"), and released the reports for public comment. By Secretary's Letter dated December 5, 2005, interested parties were directed to submit initial comments to the report by January 10, 2006 and reply comments by January 24, 2006.

At its December 7, 2005, the RPA filed a letter motion seeking full evidentiary hearings, along with a schedule specifying dates for discovery, testimony and briefings, and that JCP&L provide the RPA with completed copies of all responses to Mitchell & Titus' and Barrington-Wellesley Group's discovery requests, as well as any responses to Board Staff's discovery requests in the referenced matters. The RPA also sought the merger of JCP&L's Phase II Audit proceeding with its most recently filed Non-Utility Generation Charge Clause ("NGC") filing.

On December 16, 2005, JCP&L replied to the RPA's December 7, 2005 Motion stating that the Audit was not a contested case and that no party had the "right to a full evidentiary hearing, to propound formal discovery or to present witnesses and testimony."

On February 24, 2006, the RPA propounded sixteen discovery requests of JCP&L. On March 1, 2006, JCP&L informed the RPA that it would not respond to the sixteen discovery requests unless directed to do so by the Board. However, JCP&L offered to "make available for inspection" in Morristown copies of discovery responses provided by the Company to the auditors during the course of the Audit. The RPA did not avail itself of this option. And, on March 7, 2006, the RPA filed a letter motion asking the Board to compel JCP&L to fully respond, in a timely manner, to the RPA's previously propounded discovery requests.

On May 10, 2006, the Board's Executive Director, Victor Fortkiewicz sent a letter to the RPA outlining a course of action that would accommodate all parties in this matter. The Board gave the RPA an opportunity to participate in certain discovery related to the JCP&L Deferred Balance Phase II Audit materials. The schedule as set forth in the May 10th letter was an attempt to resolve the RPA's motions and was not to have any precedential value. JCP&L was directed to deliver to the RPA responses for most of the 16 interrogatories propounded on February 24, 2006 by May 9, 2006. Four interrogatories were to be answered by JCP&L on May 11, 2006, and the last two interrogatories were to be answered by JCP&L on May 15, 2006. May 25, 2006 was the deadline for the RPA to submit its written comments to the Board; and May 30, 2006 was the deadline for JCP&L to submit any responses to the RPA's comments. Ultimately, the schedule required that JCP&L provide the RPA with all requested discovery. The independence and integrity of the public utility audit process is the sole responsibility of the Board of Public Utilities, but in an effort to accommodate any RPA concerns, the Board allowed for the RPA's further limited discovery, specifically noting that this accommodation shall have no precedential value regarding future audits.

Position of the Parties:

RPA Position

The RPA expressed concern with the overall audit process. The RPA contends that the current audit process does not afford sufficient input from the RPA and other members of the public. In the instant matter, the RPA contends that:

"One of the difficulties in providing any meaningful initial comments is that the audit report contains mainly brief recitations of the Auditors' conclusions and findings without much detail on the background information that led them to these findings and conclusions. There are citations to interviews with utility employees regarding specific controls, key processes and procedures. (Phase II Audit Report, page II-12). Discovery responses presumably provided by JCP&L to the Auditors have only been provided on a limited basis... Moreover, the Company provided over 1500 pages of discovery responses which the Ratepayer Advocate had two weeks to review. It is impossible to thoroughly review all the documents provided in the very short time span allowed by the Board, especially when the procedural schedule provides no opportunity for additional clarification or explanation of the documents."

The RPA further opined that there are significant items which need to be carefully reviewed by the other interested parties including the Ratepayer Advocate, as well as the BPU, specifically:

"1) As of July 31, 2003, the JCP&L deferred balance for the Market Transition Charge ("MTC"), the Societal Benefits Charge ("SBC"), and the charge for Basic Generation Service ("BGS") were under-recovered by approximately \$589.8 million (Phase II Audit Report, page I-3). The Company's MTC costs exceeded MTC revenues by \$108.4 million; and 2) in the final year of the transition period, which the Phase II Audit focused on, the Company's deferred balances increased by more than \$150 million."

JCP&L Position

In response to the RPA's comments JCP&L states that "...the Phase II Audit is not a "contested case" under applicable statutory and regulatory precepts and that, therefore the Advocate is not entitled to "audit the audit" or to engage in the extensive proceedings it has sought to create around the Phase II Audit".

JCP&L further points out that

"...on March 1, 2006, JCP&L offered to make the discovery that it had provided to the Board-retained auditors "available for inspection" at the Company's offices in Morristown, although the Advocate appears to complain that such offer was somehow insufficient (May 25 Advocate Comments at 2-3). However, the Advocate neglects to mention that such offer was precisely what the Advocate requested in its Data Request RAR-1 in this docket..."

The Board finds that RPA has had ample opportunity to review and comment on issues of concern to that office.

Lastly, the RPA identified several areas of concern. The RPA, the Company positions are as follows:

Issue 1 - Adequacy of JCP&L's NUG mitigation efforts

RPA Position

"...the Audit Report concludes that JCP&L's mitigation efforts during this period were "appropriate," including the attention paid to the smaller over-market contracts (Audit Report, pages VII-14-15). The Ratepayer Advocate has not seen sufficient evidence to fully agree with that conclusion..."

JCP&L Position

"the RPA appears to suggest that their mitigation efforts may have somehow been insufficient..." and that "...the Board has already rejected that position" (Final Order dated May 17, 2004, JCP&L's 2002 Rates and Deferred Balances Filings, Docket Nos. ER02080506, ER02080507, et al)... "given the Board's determinations as to the sufficiency of NUG mitigation...there is no basis for any assertion of insufficient NUG mitigation."

The Board finds that the Auditor's Report cited three evaluative criteria for assessing JCP&L's Phase II NUG mitigation efforts (Audit Report, Pg. VII-8). They were:

- Did JCP&L maintain a reasonable and prudent program to mitigate its NUG contracts?
 - Has JCP&L taken a proactive approach to the mitigation of NUG costs and taken advantage of all reasonably available opportunities to mitigate NUG costs?
- Did JCP&L maximize revenue from sales of power from its remaining NUG entitlements?

The Auditor's report details, at length, the various mitigation efforts undertaken by JCP&L and examined by the Auditor in arriving at their opinion (Pgs. I-8 and Pgs. VII-8 to VII-16).

The Auditor's assessment, based on the evaluative criteria detailed above, was that JCP&L's management of its NUG mitigation efforts "continued to be appropriate during the Phase II period."

The Board finds that the Auditor's evaluation criteria and the evaluation performed were appropriate to assess JCP&L's mitigation efforts.

Issue 2 - Price anomalies between the average price paid per MWh between NUG contracts for Parlin and Lakewood

RPA Position

"The Audit Report indicates that the average prices paid to two NUG contracts during this period seem unusually high. The price to Parlin averaged \$356.22 per MWh, and the price paid to Lakewood averaged \$185.41 per MWh. (Audit Report, page VII-18) ... the Ratepayer Advocate requests that the Auditor verify the accuracy of the NUG contract payments included in the deferred balance for this time period."

JCP&L Position

" The Advocate's passing reference to this "issue" merely "requests that the Auditor verify the accuracy of the NUG contract payments included in the deferred balances for this period" ... "There is absolutely no reason to believe that Board-retained auditors have not already done precisely this."

The Board finds that the Deferred Balance Audit was conducted in accordance with attest standards established by the American Institute of Certified Public Accountants Standards and as such, the Auditor performed audit procedures they considered necessary under the circumstances.

The Auditor's Report states that the Auditor examined evidentiary documents supporting the deferred balance to ensure the deferred balance includes only those revenues and costs that are fairly stated, in all material respects, and in compliance with applicable Board Orders. The Report summarized the audit procedures performed, at page I-6 and at page I-13, under "Detailed Investigation".

Appropriate Audit procedures were employed to assess whether revenues from NUG contract payments were properly recorded and accounted for. Accordingly, the Board finds no further action is required.

Issue 3 - Transaction costs to achieve successful contract restructurings and mitigation

RPA Position

"The Ratepayer Advocate understands that transaction costs inevitably will be incurred to achieve successful contract restructurings and mitigation. Such costs at some point should be recoverable to the extent reasonable, prudently incurred and incremental (that is, no double recovery). The Audit Report does not discuss the reasonableness of these costs and their recovery in any detail... At this point in time; there is insufficient information on the reasonableness of these costs to permit recovery from customers. The Audit Report does not appear to support the reasonableness of these costs."

JCP&L Position

"The Advocate recognizes that "transaction costs inevitably will be incurred to achieve successful contract restructuring and mitigation" and such costs "should be recoverable to the extent reasonable, prudently incurred and incremental". JCP&L certainly agrees with this observation and simply notes that, in fact, recovery of these costs is consistent with EDECA., N.J.S.A. 48:3-61(1)(1), which specifically contemplates recognition of "all transition costs".

The Board finds that the Auditor's charge in performing the Phase II Audit was to ensure that deferred balance included only those revenues and expenses that were fairly stated and in compliance with applicable Board Orders. Audit procedures were employed and analytical test performed, on a sample basis, to arrive at an opinion on JCP&L's deferred balance. Had there been issues impacting the deferred balance materially or issues of imprudence, based on their testing, the auditor was obligated to raise those issues in their Phase II report to the Board. The Board notes the Auditor did not raise any issues which materially impacted the deferred balance; nor did they raise issues of imprudence.

The RPA asserts that the Audit Report does not appear to support the reasonableness of transaction costs. However, the RPA does not provide any specific cite or reference to any particular section of the report in support of the "assertion". Furthermore, the RPA does not cite any specific instances of unreasonableness, imprudence or double recovery. There is no basis to support the RPA's recommendation to forego recovery of transaction costs.

Issue 4 - Restructuring credits associated with the Bayonne restructuring

RPA Position:

"According to the Board's Order in the Bayonne restructuring, the Company was directed to credit the deferred balance with \$27.0 million in Restructuring Credit. Instead, due to a delay in closing, only \$25.4 million was credited to the deferred balance ... Certainly the Board Order did not contemplate that JCP&L would assess ratepayers a penalty caused by a delay in closing not related to Board approval of the restructuring agreement. If the Company was unable to negotiate a better contract for the protection of ratepayers, the Company should pay the penalty, not ratepayers. Therefore, the Ratepayer Advocate recommends that the Board direct the Company to credit the deferred balance with the entire \$27.0 million as of July 1, 2002."

JCP&L Position:

"The Advocate urges that JCP&L should for some reason be penalized for a delay in the closing of the Bayonne restructuring even though the delay was beyond the Company's control and entirely consistent with the precise terms of the restructured contract that was approved by the Board." ... "The Board-retained auditors reviewed this matter in detail and determined that JCP&L "availed itself of opportunities to expedite the closing of the Bayonne contract", explor[ed]" opportunities to accelerate the closing" even though "resolution of El Paso's financial problems was outside JCP&L's control", and was "able to assist El Paso by expediting or waiving conditions precedent to closing"

The Board finds that JCP&L is correct in their assertion that the Board's Auditor did review this matter in detail and did make the determination that "JCP&L availed itself of opportunities to expedite the closing of the Bayonne contract..." and that "while resolution of El Paso's financial problems was outside of JCP&L's control, JCP&L was able to assist El Paso by expediting or waiving conditions precedent to closing..." (Pgs. VII-13 and VII-14)" Also, the Auditor correctly pointed out that "...the Board, in its May 15, 2002 Order, Docket No. EM02030152, acknowledged the issue with respect to the timetable for closing and the financial consequences of delay..."

The Board has reviewed its Order of May 15, 2002, in Docket No. EM02030152 at page 5, which specifically states that "...the Amended PPA [Power Purchase Agreement] provides for a reduction in the \$27 million Restructuring Credit, in the amount of \$17,317 per day after the proposed effective date of the Amended PPA..." The Board finds the RPA's argument lacks merit and no penalty should be assessed to JCP&L.

Issue 5 -True-up of upfront transaction and capital reduction costs in connection with JCP&L's 2002 securitization transaction (Bondable Stranded Cost Rate Order, "BSCRO")

RPA Position

"The February 6, 2002 BSCRO authorized the inclusion of an estimated \$12.6 million in Upfront Transition Costs and Capital Reduction costs in the principal amount of transition bonds. According to the Company, the actual costs incurred were \$9.718 million. The Audit did not address the accuracy of these amounts. Further, without explanation, the Company did not credit the MTC deferred balance with the \$2.881 million difference until March 2003. The Ratepayer Advocate suggests that this credit should have been made when the Company issued the transition bonds, June 30, 2002. Furthermore, the Ratepayer Advocate recommends that the Auditors should review the timing of all such credits to ensure that ratepayers are being promptly credited with amounts owed."

JCP&L Position

"The Advocate raises concerns about the timing of the credit to JCP&L's deferred balance related to the true-up of actual Upfront Transaction and Capital Reduction Costs in connection with JCP&L's 2002 securitization transaction...the March 2003 application of what turned out to be a \$2.881 million differential was entirely consistent with the BSCRO".

The Board has reviewed its Order of February 6, 2002, BSCRO, Docket No. EF99080615 and finds that at page 31, in ordering paragraph 40, the Board Ordered that:

"Not more than nine months following issuance of the Transition Bonds, the Company will file with the Board a reconciliation statement for Upfront Transaction costs and Capital Reduction Costs...if the sum of the Upfront Costs (plus hedging costs associated with any hedging arrangements entered into prior to the pricing of the Transition Bonds) and Capital Reduction Costs is less than \$12.6 million, any difference will be accounted for by an appropriate adjustment made to the Deferred Balance."

The Company filed the true-up and then issued the credit in March, 2003. The Board finds that the Company complied with the provision of Ordering paragraph 40 by filing the true up and issuing the credit within the Board Ordered timeframe, i.e. "not more than nine months following the issuance of the Transition Bonds" which occurred June 30, 2002. No further action by the Board's Auditor is required.

Issue 6 - Recovery of "lost revenues" through the Societal Benefits Charge ("SBC")

RPA Position

"The Auditors failed to address the basis for the Company's posting to the deferred balance of \$7.4 million in "lost revenues." Rather the Audit Report merely defines "lost revenues" and then cites to a BPU Order dated after the Phase II review period. Similarly, the Report Audit simply notes that Program Costs were incurred for DSM and CRA programs; the Audit Report tells us what Insurance Proceeds are ...and explains that there are Program Costs "associated with the investigation and

remediation of environmental problems caused by former manufactured gas plants.” (Audit Report, page II-9). The Ratepayer Advocate respectfully suggests that a “FINDING” of “None” is woefully inadequate and that the Auditors should be required to make specific findings with respect to the validity and the accuracy of these costs and their inclusion into the deferred balance (Audit Report p. II-3, (citing I/M/O JCP&L, BPU Docket Nos. EO97070458, EO97070459, EO97070460, Final Decision and Order, March 7, 2001.)”

JCP&L Position

“The Company also notes specifically with respect to lost revenues, which the Advocate seems most focused on...the Company was entitled to recover specified portions of lost revenue associated with its legacy DSM [demand side management] Performance Based Programs. See Final Decision & Order dated March 9, 2001, in JCP&L’s Comprehensive Resource Analysis proceeding in Docket Nos. EX99050347, EO99050348 et al. at 78. The \$7.4 million of lost revenue recovery noted by the Auditor was related to its legacy DSM programs and was recovered pursuant to this authorization and it did not include any generation- related lost revenues.”

The Board has reviewed its March 9, 2001 Final Decision and Order, in JCP&L’s Comprehensive Resource Analysis proceeding, Docket Nos. EX99050347, EO99050348 et al. In that Order, the Board, at page 78, paragraph 29, approved:

“The continuation of lost revenue recovery for legacy programs and GPU’s transition payment of 90% for 2001 as proposed in the Utilities/NRDC Stipulation, however, any continued recovery beyond 2001 for legacy program lost revenues shall decline to 80% in 2002 and 70% in 2003. If a base rate case is filed prior to the end of the transition period, lost revenues shall be appropriately reset to zero. If there is no rate case in 2003, the Board shall reconsider the eligibility of legacy lost revenue recovery, prospectively.”

The Board finds that the lost revenues in question by the RPA were related to JCP&L’s legacy DSM programs and did not include any generation-related lost revenues. Therefore, JCP&L was entitled to the recovery of the \$7.4 million.

Finally, the RPA states that “...limitations on discovery and the resulting lack of a comprehensive review provide additional support for the Ratepayer Advocate’s request to incorporate the last year of the transition period into the Company’s pending NGC filing and into the Company’s next SBC filing...”

JCP&L urges the Board to accept as final the Audit Report.

The Audit Report states that JCP&L complied, in all material respects; with the Board Orders regarding the deferred balances for Phase II and that no findings of imprudence were noted. The Audit Report indicates that JCP&L’s deferred balance as of July 31, 2003, before implementation of the Board’s Final Order, was \$586,317,256 (under recovered) including Saxton Nuclear Decommissioning expenses. The Audit Report also indicates the deferred balance after implementation of the Final Order as of May 17, 2004 was \$413,566,692 (under recovered).

The Board **HEREBY DENIES** the RPA's motion for a full evidentiary hearing of the JCP&L Phase II Deferred Balances Audit and merger of said audit matter with the company's most recent NGC filing. The Board **HEREBY DISMISSES** as moot the RPA letter motion dated March 7, 2006, requesting the Board to compel JCP&L to fully respond, in a timely manner, to the RPA's previously propounded discovery requests.


The Board **HEREBY FINDS** that JCP&L has complied with the RPA's discovery requests. The Board **HEREBY ACCEPTS** the Audit Report for filing and **HEREBY AUTHORIZES** payment to Mitchell & Titus in the amount of \$32,784.

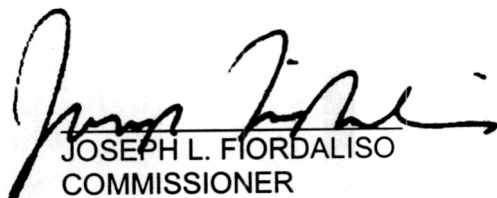
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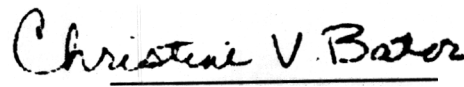
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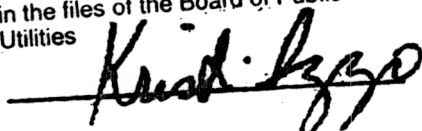

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ATTEST:

KRISTI IZZO
SECRETARY,

I HEREBY CERTIFY that the within
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Distribution List
The Deferred Balances Audit of Jersey Central Power &
Light Company - Phase II: August 2002 - July 2003
BPU Docket Nos. EX02060363 and EA02060365

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